

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

FABIAN GONZALES,

Plaintiff,

vs.

SHERIFF KNEZOVICH,  
CAPTAIN McGRATH, TODD  
MIELKE, SHELLY O'QUINN, and  
AL FRENCH,

Defendants.

NO. CV-13-250-JTR

ORDER ADOPTING REPORT AND  
RECOMMENDATION AND  
DISMISSING ACTION WITHOUT  
PREJUDICE

On March 18, 2013, Plaintiff, a prisoner at Spokane County Jail, brought a *pro se* civil rights complaint, pursuant to 42 U.S.C. § 1983. Defendants have not been served.

In a previous Order, the Court permitted Plaintiff to voluntarily dismiss his Complaint pursuant to Fed. R. Civ. P. 41(a). Plaintiff did so, *see* ECF No. 9. However, Plaintiff did not file a separate Motion and Affidavit to waive the remaining balance of the filing fee as directed.

In a previous Order, Magistrate Judge Rodgers recommended that Plaintiff's Motion to Voluntarily Dismiss Complaint, ECF No. 9, be granted and the Complaint be dismissed without prejudice. ECF No. 10. Judge Rodgers also recommended that because Plaintiff failed to file a separate Motion and Affidavit to waive the remaining balance of the filing fee as directed, Plaintiff must pay the full filing fee for this action, pursuant to 28 U.S.C. § 1915(b). *Id.* No timely objections to Magistrate Judge Rodgers' recommendations have been filed.

ORDER ADOPTING REPORT AND RECOMMENDATION  
AND DISMISSING ACTION -- 1

1 / Accordingly, **IT IS ORDERED** that:

2 1. The Report and Recommendation, ECF No. 10, is **ADOPTED in its entirety.**

3 2. Plaintiff's Motion to Voluntarily Dismiss Complaint, ECF No. 9, is  
4 **GRANTED.**

5 3. The above-captioned action is **DISMISSED without prejudice** to Plaintiff  
6 filing a new action in which he either pays the full filing fee of \$400.00 (\$350.00 filing  
7 fee, plus \$50.00 administrative fee) , or seeks leave to proceed *in forma pauperis*. A  
8 properly filed complaint by a prisoner would be subject to the screening provisions of 28  
9 U.S.C. § 1915A.

10 **IT IS SO ORDERED.** The District Court Executive is directed to enter this  
11 Order, enter judgment of dismissal without prejudice, forward a copy to Plaintiff and  
12 **close the file.**

13 **DATED** this 21<sup>st</sup> day of November, 2013.

14  
15 s/Robert H. Whaley  
16 **ROBERT H. WHALEY**  
United States District Judge  
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